

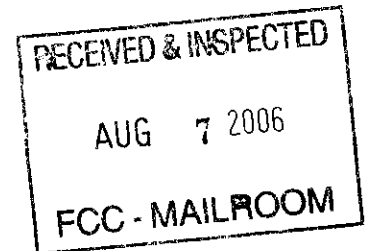


**TRESSLER, SODERSTROM, MALONEY & PRIESS, LLP**  
ATTORNEYS AT LAW

305 West Briarcliff Road  
Suite 201  
P.O. Box 1158  
Bolingbrook, IL 60440  
630/759-0800  
Fax 630/759-8504  
www.tsmp.com

George A. Marchetti  
(630) 759-0800  
gmarchetti@tsmp.com

August 4, 2006



**VIA EXPRESS MAIL**

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Ex Parte, *IP-Enabled Services*, WC Docket No. 04-36; *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Protection and Competition Act of 1992*, MB Docket No. 05-311

Dear Ms. Dortch:

On behalf of the Village of Addison, we have been asked to forward to you a copy of the Village's response to certain statements made by AT&T in an ex parte letter to you dated May 24, 2006.

Should you have any questions or require any additional clarifications, please feel free to contact me.

Sincerely yours,

George A. Marchetti

GAM:jad

Enclosures

C: Jim Lamoureux/AT&T

107329W

CHICAGO, ILLINOIS

LOS ANGELES, CALIFORNIA

ORANGE COUNTY, CALIFORNIA

WHEATON, ILLINOIS

NEWARK, NEW JERSEY

NEW YORK, NEW YORK

**ORDINANCE TERMINATING ILLINOIS BELL TELEPHONE  
COMPANY (AT&T) FRANCHISE AGREEMENT**

WHEREAS, the Village has previously entered into a franchise agreement with Illinois Bell Telephone Company, now AT&T, for the use of streets and other public places in the Village; and

WHEREAS, the ten-year term of the franchise agreement has expired, but the franchise agreement remains in effect until sixty days after notice of termination is sent by either party; and

WHEREAS, the Mayor and Board of Trustees believe and hereby declare that it is in the best interests of the Village to terminate said franchise;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF ADDISON, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: The foregoing recitals shall be and are hereby incorporated within this Section One as if said recitals were fully set forth herein.

SECTION TWO: The Agreement for Use of the Public Way, between the Village and Illinois Bell Telephone Company (now AT&T), dated July 6, 1992, shall be and is hereby terminated, on the sixtieth day after the effective date of this ordinance.

SECTION THREE: The Village Clerk shall be and is hereby authorized and directed to cause a copy of this ordinance to be sent to AT&T and its local representative.

SECTION FOUR: Any policy, resolution or ordinance that conflicts with the provisions of this ordinance shall be and is hereby repealed to the extent of such conflict.

SECTION FIVE: This Ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

PASSED THIS 15<sup>th</sup> day of May, 2006.

AYES: Trustees Hendley, Payne, Lynch, Madern, H. Hledore + Kerasia

NAYS: None

ABSENT: None

APPROVED THIS 15<sup>th</sup> day of May, 2006.

ATTEST:

Maria Conrad  
Deputy Village Clerk

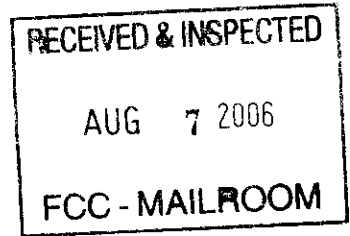
James Hartung  
Mayor



# Village of Addison

August 3, 2006

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554



Re: Ex Parte, *IP-Enabled Services*, WC Docket No. 04-36; *Implementation of Section 621 (a) (1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Protection and Competition Act of 1992*, MB Docket No. 05-311

Dear Ms. Dortch:

The Village of Addison, Illinois ("Addison") has recently been made aware of a May 24, 2006 *ex parte* letter sent to you by AT&T with respect to the above-captioned docket. In that letter at page 4, AT&T makes the following statement:

Most recently another Illinois Municipality – Addison, IL – passed two ordinances targeted at AT&T. One Ordinance terminated AT&T's existing franchise to use public rights-of-way, effective 60 days from May 15, 2006. The other Ordinance amended the Village Code and required telecommunications providers that provide "community antenna television service" to obtain a cable franchise and comply with the Illinois "level playing field" statute, 65 Ill.Comp.Stat. 5/11-42-11, apparently without regard to whether AT&T is a "cable operator" or providing "cable service."

The ordinances referred to by AT&T in this statement are attached. AT&T's statement hardly begins to tell the complete story. The following are the facts that AT&T has found it convenient to ignore.

First, the franchise, to which AT&T refers, was entered into by Addison and the Illinois Bell Telephone Company ("IBT") on July 6, 1992. The term of the IBT franchise agreement was 10 years. However, the IBT franchise agreement further provided that, after the ten-year period expiring in 2002, either party could cancel the franchise upon 60 days prior notice. Neither IBT nor AT&T ever requested that the franchise be extended beyond 2002 or that a new franchise be considered by Addison.

While AT&T may no longer have a franchise in Addison, AT&T is not prevented from installing telephone-related equipment in Addison's rights-of-way. Under 220 ILCS 65/1 *et seq.*, all telephone companies in Illinois have the legal right to install their equipment in municipal rights-of-way, subject to municipal regulation.



# Village of Addison

STATE OF ILLINOIS )

COUNTY OF Du PAGE )

I, Lucille Zuccherro, Village Clerk of the Village of Addison, Illinois, DO HEREBY CERTIFY that as such Village Clerk and keeper of the records, that the foregoing is a true and correct copy of Ordinance No. O-06-36, passed and approved by the Mayor and Board of Trustees of the Village of Addison at the May 15, 2006 Village Board meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 3<sup>rd</sup> day of August, 2006.

A handwritten signature in cursive script that reads "Lucille A. Zuccherro".

Lucille A. Zuccherro, CMC  
Village Clerk  
Village of Addison  
DuPage County, Illinois

Since January, 1999, Addison has had in effect an ordinance which regulates the construction of utility facilities in the public rights-of-way. The ordinance is codified as Chapter 17, Article VI. of the Village Code. Thus, with the expiration of the franchise agreement, AT&T is now simply subject to the same regulations that have applied to all other non-franchised utilities since 1999 in Addison. AT&T is treated no differently than any other utility without a franchise under the ordinance.

Second, AT&T claims that Addison's ordinance will require AT&T to comply with the Illinois "level playing field" statute once AT&T begins to offer television programming. *See*, 65 ILCS 5/11-42-11. That claim is true. However, as you may know, this statute is mandatory and binding on *all* Illinois municipalities.

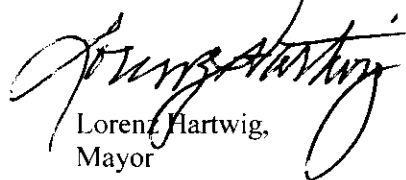
AT&T's insistence that it is not a "cable operator" and will not provide "cable service" is, frankly, a red herring. The level playing field statute is not limited to "cable service". Rather, the statutory definition refers to "community antenna television systems" ("CATV"), which is a broader term than "cable service".

Addison is bound to comply with this statutory definition as a matter of law. Moreover, Addison is bound by the decision of the Illinois Supreme Court in *Illinois-Indiana Cable Television Association v. Illinois Commerce Commission*, 55 Ill.2d 205, 302 N.E.2d 334 (1973), where the Court held that the distinction between telephone services and CATV services was that telephone services were traditional voice or data transmissions and that CATV services involved programming.

Consequently, it is Addison's position that (1) AT&T has a right to locate telephone-related equipment in the public rights-of-way, subject to Addison's generally applicable regulations, and (2) before AT&T can use any of its equipment for television programming services, Illinois statutory and case law clearly require that as a CATV provider, AT&T will need to obtain a franchise from Addison in accordance with 65 ILCS 11-42-11. It should further be noted that the franchise requirements for AT&T, under the statutes, should it decide to use Project Lightspeed equipment for CATV purposes, would be essentially the same as for any other CATV provider.

I trust this letter will serve to dissipate any confusion with respect to Addison's ordinances. Addison wholeheartedly encourages competition in the CATV market but is bound to follow State statutes and decisions of the Illinois Supreme Court.

Sincerely,  
VILLAGE OF ADDISON



Lorenz Hartwig,  
Mayor

att.

SECTION SIX: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

PASSED THIS 15<sup>th</sup> day of May, 2006.

AYES: Justices Hurdley, Rapp, Lynch, McDermott, Theodore & Verstra

NAYS: None

ABSENT: None

APPROVED THIS 15<sup>th</sup> day of May, 2006.

ATTEST:

Maria Conrad  
Deputy Village Clerk

Henry Hartung  
Mayor

PUBLISHED: May 16, 2006

LKL\103340\REV5/9/06



# Village of Addison

STATE OF ILLINOIS                    )

COUNTY OF Du PAGE                )

I, Lucille Zuccherro, Village Clerk of the Village of Addison, Illinois, DO  
HEREBY CERTIFY that as such Village Clerk and keeper of the records, that the  
foregoing is a true and correct copy of Ordinance No. O-06-35, passed and approved by  
the Mayor and Board of Trustees of the Village of Addison at the May 15, 2006  
Village Board meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name and  
affixed my seal this 3<sup>rd</sup> day of August, 2006.

A handwritten signature in cursive script that reads "Lucille A. Zuccherro".

Lucille A. Zuccherro, CMC  
Village Clerk  
Village of Addison  
DuPage County, Illinois

- (2) Telecommunications Providers. In the event of any conflict with, or inconsistency between, the provisions of this Article and the provisions of any franchise, license or similar agreement between the Village and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.
- (3) Notwithstanding anything to the contrary set forth in this Section, any person, corporation, partnership or other legal entity that operates a "community antenna television system," as defined in 65 ILCS 5/11-42-11, as now existing or hereafter amended, shall be required to obtain a franchise from the Village in the manner provided by law before providing any community antenna television services within the Village.

SECTION THREE: Those portions of Section 17-601 of the Village Code that have not been expressly amended herein shall be and are hereby ratified and affirmed and shall remain in full force and effect.

SECTION FOUR: Subparagraph 616(B)(6) of Chapter 17 of the Village Code shall be and is hereby amended in its entirety so that said Subparagraph 17-616(B)(6) shall hereafter be and read as follows:

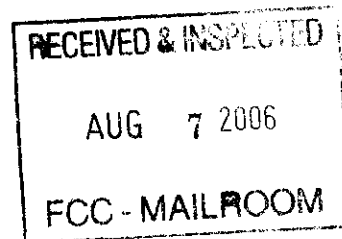
- (6) Ground Mounted Appurtenances. Ground mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way by variance, shall be provided with a vegetation-free area extending one foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the Director of Public Works. With the approval of the Director of Public Works, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

SECTION FIVE: All policies, ordinances or resolutions, or parts thereof that conflict with the provisions of this Ordinance are hereby expressly repealed to the extent of such conflict.



ORDINANCE NO. *0-06-35*

**ORDINANCE AMENDING CERTAIN PROVISIONS OF  
CHAPTER 17 OF THE VILLAGE OF ADDISON CODE**



WHEREAS, pursuant to 65 ILCS 5/11-42-11, the corporate authorities of each Illinois municipality may license, franchise and tax the business of operating a community antenna television system; and

WHEREAS, the Mayor and Board of Trustees find and hereby declare that it is appropriate and in the best interests of the Village that certain provisions of Chapter 17, Article 6 of the Village Code be amended as hereinafter provided and that all such systems be required to obtain a franchise from the Village;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF ADDISON, DU PAGE COUNTY, ILLINOIS, PURSUANT TO ITS STATUTORY AND HOME RULE POWERS, AS FOLLOWS:

SECTION ONE: The foregoing recitals are hereby incorporated in this Section One as if said recitals were fully set forth herein.

SECTION TWO: Subsection (D) of Chapter 17, Article VI (Construction of Utility Facilities in the Public Rights-of-Way), Section 17-601 of the Village Code of the Village of Addison shall be and is hereby amended in its entirety so that said Subsection 17-601(D) shall hereafter be and read as follows:

(D) Effect of Franchises, Licenses, or Similar Agreements.

- (1) Utilities Other Than Telecommunications Providers. In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the Village, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.